IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

RP.No. 1142 of 2006()

AGAINST THE JUDGEMENT/ORDER IN OP.23136/2002 Dated 22/06/2006

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REVIEW PETITIONERS/RESPONDENTS

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1. THE ASST. EXECUTIVE ENGINEER,
   ELECTRICAL MAJOR SECTION,
   KERALA STATE ELECTRICITY BOARD,
   AZHIKODE, KANNUR DISTRICT.

2. THE DEPUTY CHIEF ENGINEER,
   ANTI POWER THEFT SQUAD (HQ),
   THIRUVANANTHAPURAM.

3. THE KERALA STATE ELECTRICITY BOARD,
   REP. BY ITS SECRETARY,
   VAIDYUTHI BHAVAN, PATTAM,
   THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONERS

M/S.WESTERN BOARDS,
REP. BY K.S.FAIZAL, PROPRIETOR,
MOLL ROAD, VALAPATTANAM, KANNUR DISTRICT.

BY ADV. SRI.V.P.SUKUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH, J.

R.P.No.1142 of 2006
in
O.P.No.23136 of 2002

Dated 17th January, 2007.

O R D E R

This is a petition to review the judgment dated 22.6.2006 in O.P.No.23136/02. The issue pertains to the steps taken by the review petitioners for realising proportionate energy charges on account of the alleged unauthorised load. Following the Division Bench judgment in W.A.1231/03, this Court held that there shall not be penalty by way of proportionate energy charges and that the penalty should be limited to the fixed charges.

2. Sri.C.K.Karunakaran, learned counsel appearing for the Board submits that the Division Bench only prohibited the levy of maximum penalty and the matter has to be decided on a case to case basis. I am afraid, the contention cannot be appreciated. Admittedly, there is no prescribed norm or guidelines in such situations to be examined on a case to case basis. That would only pave way to unhealthy situations of arbitrariness. That apart, since the energy charges can be levied only for the measured energy, whether there is any scope at all for such examination is yet another issue, though Sri.Karunakaran contended that it is not

the energy charges that is levied, but the penalty. If as a matter of fact it is the penalty that is levied, there is no purpose in using the expression 'proportionate energy charges'. Once the expression used is 'proportionate energy charges', that would only indicate the quantum of energy that could have been consumed by such installation using the said additional load, which is against the spirit of Section 26(6) of the Indian Electricity Act, 1910, since irrespective of the connected load, the energy consumed has already been properly measured and billed. In fact the Board itself in the case of commercial consumers has admitted and applied the above principle, as noted in the writ appeal judgment. In that view of the matter, there is nothing on merits to review the judgment. The review petition is hence dismissed.

KURIAN JOSEPH, JUDGE.

ahg.